IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18006 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL BABALDAS PATEL

Versus

LIQUIDATION OFFICER SAHYOG CO-OP BANK LTD

Appearance:

1. Special Civil Application No. 18006 of 2003

MRS YOGINI V PARIKH for Petitioner No. 1

MR KD GANDHI FOR NANAVATI ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/03/2004

ORAL JUDGEMENT

1. Leave to join - Jyotsnaben G. Thakkar, Kamleshbhai K. Mehta, Bismillakhan Balooch, Mahndrabhai Shah, Bhadreshbhai Patel, Rajeshbhai Shah, Ishwarbhai

Prajapati, and Dipakbhai Shah as petitioners Nos.2 to 9 respectively and the learned counsel Ms.Parikh for the petitioner states that all necessary formalities for carrying out amendment and for filing of Vakalatnama shall be completed within a period of one week from today.

2. When this matter came up for confirmation of interim relief, with the consent of the learned counsels appearing for both the sides, the matter itself is taken up for final hearing today.

3. The short facts of the case are that the petitioners were employees of Sahyog Co-operative Bank Ltd. [hereinafter referred to as "the Bank"], which has gone into liquidation and liquidator is also appointed under the provisions of the Gujarat Co-operative Societies Act. The Bank is at present being represented by the Liquidator and the Bank took action for retrenchment of all the petitioners from service. As per the respondent, the amount calculated towards the retrenchment compensation is of Rs.8,35,974/and notice pay is of Rs.72,665/- total Rs.9,08,639/-. The learned advocate Mr.Keyur Gandhi for the respondent has produced on record the statement showing calculation and the said statement is taken on record. However, as per the petitioners', in addition to the aforesaid amount, their case is that they would be entitled to receive leave encashment benefit, bonus and gratuity amount. The calculation of the amount receivable by the petitioner from the Bank as per the petitioners, is produced at page.23 at Annexure-D to the petition. If the statement produced by the respondent is compared with the statement produced by the petitioners, it appears that there is marginal difference so far as the retrenchment compensation and notice pay is concerned. Even learned counsel Mr.Keyur Gandhi for the respondent, under the instructions of Liquidator Shri Jethabhai of the respondent Bank, also submitted that the bank has no objection in paying the retrenchment compensation and the notice pay. However, as per the respondent, the petitioners are not entitled to the benefit of leave encashment, bonus etc.

4. It appears that since action was taken for termination by way of offering retrenchment compensation etc. and the same was not acceptable to the petitioners, a dispute is raised by the petitioners by preferring the applications before the labour court under the Bombay Industrial Relations Act, 1946, separately. In the said

proceedings before the labour court, the petitioners submitted interim applications for setting apart the amount which are receivable by the petitioners and it was prayed in the said application that such amount should be earmarked and the same should not be paid to any party without prior permission of the Court. A copy of the said application is produced at Annexure-B to this petition. The labour court, heard the said application and ultimately dismissed the same, against which, the petitioners have approached this Court by the present petition.

5. After hearing learned counsel appearing for the petitioners as well as for the respondent, it appears that there is no dispute so far as the quantum of retrenchment compensation and notice pay. The only dispute is regarding the amount of leave encashment, bonus etc. The disputed amount, as per the calculation produced on record at page.23 compared with the statement produced by the learned counsel Mr.Keyur Gandhi, is of Rs.2,36,944/- and so far as the undisputed amount of Rs.9,08,639/- is concerned, it is the case of the Bank that the said amount is even otherwise available for payment to the concerned petitioners.

6. Under the above circumstances, it appears that the main matter is still pending before the labour court for its adjudication and the petitioners have approached to this Court at the interim stage. Since it is a Co-operative Bank which is ordered to be wound up / liquidated, the apprehension of the petitioners was that if the amount is already paid to any other party, it may be difficult for the petitioners to recover the amount from the bank even if their termination stand, the apprehension of the petitioners cannot be said to be wholly unfounded. At the same time, when disputed amount is only of Rs.2,36,944=00 if such amount is earmarked by the respondent towards the litigation which is pending in the labour court, I find that no serious prejudice will be caused to the Bank and therefore, at this stage, it may not be necessary for this Court to examine larger question regarding the priority to be given to the outstanding debts of secured creditors, wages or otherwise. As regards the undisputed amount of retrenchment compensation and notice pay is concerned, there will not be any purpose in allowing the said amount to be with the respondent Bank and since termination is as such effected subject to the outcome of the proceedings before the labour court, such undisputed amount towards retrenchment compensation and notice pay, can be allowed to be paid to the concerned petitioners

subject to outcome and without prejudice to rights and contentions in the main concerned proceedings before the labour court.

7. In view of above, I find that the following direction shall meet with the ends of justice.

[I] The order dated 21.9.2002 passed by the labour court below interim application in respective T.Application is hereby quashed and set aside with further direction that the respondent shall set apart the amount of Rs.2,36,944/- towards the litigation in question and shall not make payment to any party without prior permission of the labour court concerned.

[II] It is further directed that so far as the undisputed amount of Rs.9,08,639/- comprising of retrenchment compensation and notice pay, as it has been declared that the provision of aforesaid amount is already made, it would be open to the concerned petitioners to withdraw the said proportionate amount from the respondent Bank without prejudice to the rights and contentions and subject to outcome of the proceedings of the main T.Applications before the labour court. Until the amount is withdrawn by the concerned petitioners from the bank comprising of notice pay and retrenchment compensation, the respondent shall not utilise such amount for any other purpose including for making payment to any of its creditors or depositors.

[III] If the concerned petitioners move the Bank for withdrawal of the said amount, the payment thereof shall be made within a period of two weeks from the date of making such request.

The petition shall stand allowed in terms of the aforesaid directions.

Rule is made absolute to the extent indicated hereinabove. No order as to costs.

Date : 11.3.2004 [Jayant Patel, J.]

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